



Comptroller General  
of the United States

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Washington, D.C. 20548

## Decision

**Matter of:** Inland Marine Industries, Inc.

**File:** B-249914; B-249918

**Date:** December 24, 1992

D. Whitney Thornton, II, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for the protester.

Charles J. McManus, Esq., Jonathan H. Kosarin, Esq., and Anita D. Polen, Esq., Department of the Navy, for the agency.

Sylvia Schatz, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protests filed after closing date for receipt of proposals alleging that solicitations were ambiguous are untimely where any ambiguity was apparent on the face of the solicitations; protester could not simply make assumptions regarding the meaning of the solicitations and then expect relief when the agency did not act in the manner the protester assumed it would.

### DECISION

Inland Marine Industries, Inc. protests the terms of request for proposals (RFP) Nos. N00189-92-R-0199 and N00189-92-R-0294, issued by the Naval Supply Center, Department of the Navy, for crew berth lockers. A crew berth locker is a sleeping surface with an integrally attached locker, which is a component of the entire crew berth. The protester primarily argues that the solicitation was ambiguous and that the disparate prices in the proposals received establishes the existence of this ambiguity.

We dismiss the protests.

RFP-0199, issued on April 24, 1992, requested firm, fixed price proposals for the following contract line items (CLIN): CLIN 0001: "berth locker, crew," 6' 5-1/2" in length; CLIN 0002: "crew berth," 6' 1-1/4" in length; and CLIN 0003: "crew berth," 6' 7-1/4" in length. The Navy subsequently amended the solicitation to revise CLIN 0002 to specify "berth locker, crew," 6' 1-1/4" in length, and CLIN 0003 to specify "berth locker, crew," 6' 7-1/4" in length. RFP-0294, issued on June 22, also requested firm, fixed-price proposals for a quantity of "berth locker, crew"

items. Both solicitations stated that the proposed berths must be in accordance with specific Navy drawings, which were modified by notes in the RFPs specifying the accessories to be included as part of the berths. (Both solicitations contained the same notes and drawings.) The RFPs also incorporated Federal Acquisition Regulation (FAR) § 52.215-16, entitled "Contract Award" (Alternate III), which provides, in part, that the government intends to evaluate proposals and award a contract without discussions with offerors. The solicitations notified offerors that any questions and/or requests for clarifications concerning the technical specifications, clauses, and/or provisions must be submitted in writing to the contracting officer prior to the closing dates. Awards under both RFPs were to be made to the responsive offeror whose offer was the most advantageous to the government.

Seven firms, including Inland, submitted offers ranging from \$94,000 to \$870,500 for RFP-0199 by the June 23 closing date; while Inland offered a price of \$358,050, Tri-Way Industries submitted the low priced offer of \$94,000. Nine firms, including Inland, submitted offers ranging from \$155,700 to \$1,566,900 for RFP-0294 by the August 6 closing date; while Inland offered a price of \$536,400, Tri-Way submitted the low priced offer of \$155,700. The Navy determined that the offers of Tri-Way were the most advantageous to the government and so notified all offerors. Subsequently, on August 13, in response to a Freedom of Information Act request, Inland received the abstract of offers under RFP-0199; it then protested the selection of Tri-Way under both solicitations to our Office on August 18.

Inland in effect argues that the requirements for "berth locker, crew" were ambiguous. Specifically, the protester argues that notwithstanding the fact that the RFPs as amended specified "berth locker, crew," that is, single crew berth lockers, which is what Tri-Way offered and what the Navy has indicated it sought, Inland reasonably read the RFPs as clearly requiring the awardee to supply the overall three-tier crew berths since the solicitations incorporated drawings which described the overall crew berths and which had been contained in prior solicitations for three-tier crew berths. Inland maintains that its protests were timely filed, since the allegedly ambiguous requirement only became apparent after the closings when Inland received the abstract of offers from RFP-0199 showing the wide range of prices offered.

Under our Bid Protest Regulations, allegations of improprieties in a solicitation, where such defects were apparent on the face of the solicitation, must be raised prior to the closing date for receipt of proposals.

4 C.F.R. § 21.2(a)(1) (1992); PEC Constr., Inc., B-245462, Oct. 1, 1991, 91-2 CPD ¶ 277.

Although Inland alleges that the requirement for "berth locker, crew," when considered in conjunction with the drawings describing the overall crew berths, created a latent defect in the RFPs, i.e., a defect which could not be detected prior to closing, it is clear that any ambiguity in this regard was apparent on the face of the solicitation and thus had to be protested prior to closing. Specifically, the amendment of CLINS 0002 and 0003 in RFP-0199 to specify "berth locker, crew," rather than "crew berth," was apparent on the face of the solicitation. Furthermore, when RFP-0249 was subsequently issued, it specified "berth locker, crew," not "crew berth". Inland could not simply rely on the fact that the drawings described the overall crew berths and ignore the fact that the solicitations on their face specified only crew berth lockers. Protesters do not have the option of simply making assumptions regarding the meaning of a provision in the RFP and then expect relief when the agency did not act in the manner the protester assumed. See Home Care Med., Inc., B-245189, Aug. 21, 1991, 91-2 CPD ¶ 186.

The protests are dismissed as untimely.



David Ashen  
Deputy Assistant General Counsel

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<sup>1</sup>Inland also maintains that given the disparity in prices offered, the agency improperly failed to conduct discussions. A contracting agency, however, may make award on the basis of initial proposals and not conduct discussions, where, as here, the solicitation advises offerors of the agency's intent to do so, and the contracting officer determines that discussions are not necessary. FAR § 15.610(a). The Navy was not required to conduct discussions, but properly could select Tri-Way, whose low priced offers were found most advantageous to the government, on the basis of initial proposals. See Warren Pumps, Inc., B-248145.2, Sept. 18, 1992, 92-2 CPD ¶ 167; Dataproducts New England, Inc. et al., B-246149.3 et al., Feb. 26, 1992, 92-1 CPD ¶ 231; Macro Serv. Sys., Inc., B-246103; B-246103.2, Feb. 19, 1992, 92-1 CPD ¶ 200.